

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PALTALK HOLDINGS, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	CIVIL ACTION NO. _____
SONY COMPUTER ENTERTAINMENT	§	
AMERICA INC.; SONY ONLINE	§	
ENTERTAINMENT LLC; SONY	§	
CORPORATION; SONY CORPORATION	§	
OF AMERICA; ACTIVISION BLIZZARD,	§	
INC.; BLIZZARD ENTERTAINMENT,	§	
INC.; NCSOFT CORPORATION; JAGE	§	
X LTD.; AND TURBINE, INC.	§	
	§	JURY TRIAL DEMANDED
Defendants.	§	
	§	

COMPLAINT

Plaintiff PalTalk Holdings, Inc. ("PalTalk") brings this action against Sony Computer Entertainment America, Inc.; Sony Online Entertainment LLC; Sony Corporation, Sony Corporation of America, Activision Blizzard, Inc.; Blizzard Entertainment, Inc.; NCSoft Corporation; Jagex, Ltd.; and Turbine, Inc. for patent infringement arising out of the Patent Laws of the United States, Title 35, United States Code.

I. PARTIES

1. All facts herein are alleged on information and belief except those facts concerning PalTalk's own activities.
2. PalTalk is a Delaware corporation with its principal place of business at 500 North Broadway, Suite 259 Jericho, NY 11753. PalTalk is the owner of various patents relating to methods and systems for communicating over networks.

3. Sony Computer Entertainment America Inc. (“SCEA”) is a Delaware corporation with its principal place of business at 919 East Hillsdale Blvd. Foster City, CA 94404. SCEA may be served with this complaint through its registered agent, Corporation Service Company (doing business as CSC – Lawyers Incorporating Service Company), located at 701 Brazos Suite 1050 Austin, TX 78701.

4. Sony Online Entertainment LLC (“SOE”) is a Delaware limited liability company with its principal place of business at 8928 Terman Court San Diego, CA 92121. SOE may be served with this complaint through its registered agent, Sony Pictures Entertainment Inc. whose registered agent is Leonard Venger 10202 W. Washington Blvd. Culver City, CA 90232.

5. Sony Corporation of America (“Sony America”) is a New York corporation with a principal place of business at 550 Madison Avenue 27th Floor New York, NY 10022. Sony America may be served with this complaint through its registered agent Corporation Service Company located at 80 State Street Albany, NY 12207-2543. Sony America is a parent company to SCEA. SCEA owns at least a portion of SOE.

6. Sony Corporation (“Sony”) is a Japanese company with a principal place of business at 1-7-1 Konan, Minato-ku, Tokyo 108-0075, Japan. Sony is a parent company to Sony America.

7. Activision Blizzard, Inc. (“Activision”) is a Delaware corporation with its principal place of business at 3100 Ocean Park Blvd. Santa Monica, CA 90405. Activision may be served through its registered agent, Corporation Service Company (d/b/a CSC – Lawyers Incorporating Service) 2730 Gateway Oaks Dr. Suite 100 Sacramento, CA 95833.

8. Blizzard Entertainment, Inc. (“Blizzard”) is a Delaware corporation with its principal place of business at 3100 Ocean Park Blvd. Santa Monica, CA 90405. Blizzard may be

served through its registered agent, Corporation Service Company (d/b/a CSC – Lawyers Incorporating Service) 2730 Gateway Oaks Dr. Suite 100 Sacramento, CA 95833.

9. NCSOFT Corporation (“NCSOFT”) is a Republic of Korea corporation with its principal place of business at 6801 N. Capital of Texas Hwy Suite 102 Austin, TX 78731. NCSOFT may be served through its registered agent, Corporation Service Company (d/b/a CSC – Lawyers Incorporating Service Company) 701 Brazos Street, Suite 1050 Austin, TX 78701.

10. Jagex Limited (“Jagex”) is a developer of online games, headquartered in the United Kingdom with a principal place of business at St. John’s Innovation Centre Cowley Road Cambridge CB4 0WS United Kingdom.

11. Turbine, Inc. (“Turbine”) is a Delaware corporation with its principal place of business at 60 Glacier Dr., Suite 4000 Westwood, MA 02090. Turbine may be served through its registered agent, CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110.

12. Sony, Sony America, SCEA, SOE, Activision, Blizzard, NCSOFT, Jagex, and Turbine are collectively referred to herein as the “Infringing Parties.”

II. JURISDICTION AND VENUE

13. This is an action for patent infringement under the Patent Act, 35 U.S.C. § 271. The Infringing Parties provide infringing services in the Eastern District of Texas. This Court has personal jurisdiction over the Infringing Parties, in part, because they have subscribers who reside in the Eastern District of Texas and provide infringing online services to their subscribers in this district. This Court has subject matter jurisdiction by virtue of Sections 1331 and 1338(a) of Title 28, United States Code.

14. Venue in this Court is proper by virtue of Sections 1391(b) and (c) and 1400(b) of Title 28, United States Code. Upon information and belief, at least SOE, Activision, Blizzard,

NCSoft, and Turbine operate offices and/or facilities in Texas, some of which service infringing games and/or provide infringing services.

III. BACKGROUND

A. PalTalk and the PalTalk Patents

15. PalTalk's predecessor-in-interest, HearMe (formerly known as MPath Interactive Inc.), is one of the early pioneers of technology that allows users to participate in multiplayer games over the Internet. Multiplayer games conducted over wide area networks generally involve difficult technical issues because of the requirement that all players have the same view of the game environment in real time. PalTalk's technology provides for efficient handling of communications between players necessary to maintain a consistent game environment for all players. PalTalk's technology covers a number of aspects of online gaming, including communications through a group messaging server as well as establishing groups for online game play.

16. PalTalk's predecessor-in-interest filed numerous patent applications that cover online gaming technology. On October 13, 1998, the United States Patent and Trademark Office issued the first of these utility patent applications. Specifically, United States Patent No. 5,822,523 (the "'523 Patent") was duly and legally issued to MPath Interactive Inc. as the legal assignee of the inventors, Jeffrey Rothschild, Marc Kwiatkowski, and Daniel Samuel. The title of the '523 Patent is "Server-Group Messaging System for Interactive Applications." A true and correct copy of the '523 Patent is attached as Exhibit "A." Thereafter, the United States Patent Office issued other patents on HearMe's technology, including U.S. Patent No. 6,226,686 (the "'686 Patent"), which issued on May 1, 2001. A true and correct copy of the '686 Patent is attached as Exhibit "B." The '686 Patent is a continuation of U.S. Patent No. 6,018,766, which

is a continuation of the '523 Patent. The '523 Patent and the '686 Patent collectively constitute the "PalTalk Patents." In 2002, HearMe sold the PalTalk Patents to PalTalk Holdings, Inc.

17. Before a group of players can form an online game, they must establish channels of communication between their respective computers. Each computer participating in the online game play must be capable of transmitting its player's movements to the group such that all players have consistent views of the game environment. The transmissions must occur frequently in order to maintain consistency between the computers. The frequency requirement is particularly acute in action-oriented video games with high resolution graphics. Such games require very frequent updates from most or all players in order to maintain a real time consistent view of the game environment. The large number of communications necessary from a number of players can result in communication bandwidth or computer processing bottlenecks.

18. To alleviate these problems, the '523 Patent describes, as a preferred embodiment, using a group messaging server to receive the individual messages from each computer. The group messaging server maintains an accurate list of all members of the group, eliminating the need for each member of the group to maintain its own independent list. The group messaging server of the '523 Patent also is capable of aggregating the payload portions of the individual messages into an aggregated message, which the group messaging server may then send to each group member. Aggregation through the group messaging server simplifies the communications between computers by reducing the number of messages that each individual computer must send and receive.

19. The '686 Patent describes and claims forming a message group and maintaining consistency between the computers within the group. In particular, the '686 Patent describes receiving a create message specifying a message group to be created and receiving join messages

from a first subset of host computers specifying the message group. The '686 Patent also describes receiving host messages from a second subset of the first subset of host computers within the message group and aggregating the payload portions of those host messages to form an aggregated message. The aggregated message is then sent to the first subset of host computers within the message group. The method described in the '686 Patent similarly facilitates efficient communications between host computers and reduces the burden of maintaining consistency between the host computers within the message group.

B. SCEA's Infringing Products and Services

20. After MPath invented its technology, online game play became one of the most popular Internet activities. The following facts relating to SCEA are provided upon information and belief. On or around November 17, 2006, SCEA released its PlayStation 3 ("PS3") game console in the United States. On or around March 24, 2005, SCEA released its PlayStation Portable ("PSP") game console in the United States. Subsequently, in or around November 2006, SCEA released its PlayStation Network service in the United States, allowing players of PS3 and PSP games to play together over broadband connections to the Internet. By June 2009, SCEA announced that it had 25 million registered users for its PlayStation Network service.

21. Upon information and belief, in addition to revenue from hardware and online services, SCEA's wholly owned subsidiaries, Guerrilla Games; Evolution Studios Ltd.; and Polyphony Digital, Inc. produce video games that use the online gaming features provided by the PS3, PSP, and PlayStation Network products and services. SCEA publishes those video games in the United States.

22. Upon information and belief, SCEA also partners with certain game studios, such as Insomniac Games, Inc. which also produce video games that use the online gaming features

provided by the PS3, PSP, and PlayStation Network products and services. SCEA also publishes those video games in the United States. Upon information and belief, SCEA also receives royalties from other game publishers for games that can be played on the PSP, PS3, and PlayStation Network.

23. Certain game play on the PS3 or PSP and through the PlayStation Network online gaming service infringes the PalTalk patents. As a result of SCEA's unauthorized and infringing use of PalTalk's patented technology, PalTalk has suffered damages in at least the tens of millions of dollars.

C. SOE's Infringing Products and Services

24. The following facts relating to SOE are provided upon information and belief. The massively multiplayer online role-playing game EverQuest was released on or around March 16, 1999. SOE was involved in the development and publication of EverQuest. EverQuest II was released in or around 2004. Both EverQuest and EverQuest II require subscriptions to play over the Internet. By 2004, EverQuest had more than 430,000 subscribers at a cost of approximately \$8-\$15 per month.

25. Both EverQuest and EverQuest II when played online through SOE's service infringe the PalTalk patents. As a result of SOE's unauthorized and infringing use of PalTalk's patented technology, PalTalk has suffered damages in at least the tens of millions of dollars.

D. Activision's Infringing Products and Services

26. The following facts relating to Activision are provided upon information and belief. Activision publishes and develops games for PS3, the PlayStation Network, and for other proprietary gaming consoles, including the Nintendo Wii. Call of Duty is a first person shooter game published by Activision and developed by the Activision subsidiary Infinity Ward. Call of

Duty was originally released on or around October 29, 2003. Numerous additional versions of the game have been produced since its introduction, including but not limited to Call of Duty 2, Call of Duty 3, Call of Duty: World at War, and Call of Duty 4: Modern Warfare.

27. Call of Duty: World at War has sold approximately 1.5 million copies in the United States and provides the capability for multiplayer games over the Internet using SCEA's PlayStation Network. Another version of Call of Duty: World at War for play on the Nintendo Wii console has sold over 500,000 copies in the United States and provides the capability for multiplayer games over the Internet. Call of Duty 4: Modern Warfare has sold approximately 2 million copies in the United States and also provides the capability for multiplayer games over the Internet using SCEA's PlayStation Network.

28. When played in a multiplayer mode over the Internet, at least the Call of Duty: World at War and Call of Duty 4: Modern Warfare games infringe the PalTalk patents. As a result of Activision's unauthorized and infringing use of PalTalk's patented technology, PalTalk has suffered damages in at least the tens of millions of dollars.

E. Blizzard's Infringing Products and Services

29. The following facts relating to Blizzard are provided upon information and belief. The massively multiplayer online role-playing game World of Warcraft was released on or around November 23, 2004. Blizzard was involved in the development and publication of World of Warcraft. World of Warcraft requires subscriptions to play over the Internet. By 2008, World of Warcraft had approximately 11.5 million monthly subscribers at a cost of approximately \$13-\$15 per month. World of Warcraft is currently the most-subscribed massively multiplayer online role-playing game in the world.

30. When played online through Blizzard's service World of Warcraft infringes the PalTalk patents. As a result of Blizzard's unauthorized and infringing use of PalTalk's patented technology, PalTalk has suffered damages in at least the tens of millions of dollars.

F. NCSOFT'S INFRINGING PRODUCTS AND SERVICES

31. The following facts relating to NCSOFT are provided upon information and belief. The online role-playing game Guild Wars was released on or around April 28, 2005. NCSOFT was involved in the development and publication of Guild Wars through itself and its subsidiary ArenaNet. By April 2009, NCSOFT had sold approximately 6 million copies of the Guild Wars series of software. Guild Wars does not require a subscription fee for online play. NCSOFT earns revenue from sales of the game software as well as expansion packs and other retail products associated with the game.

32. When played online through NCSOFT's service Guild Wars infringes the PalTalk patents. As a result of NCSOFT's unauthorized and infringing use of PalTalk's patented technology, PalTalk has suffered damages in at least the tens of millions of dollars.

G. JAGEX'S INFRINGING PRODUCTS AND SERVICES

33. The following facts relating to Jagex are provided upon information and belief. The massively multiplayer online role-playing game Runescape was released on or around January 4, 2001. Runescape 2 was released on or around March 17, 2004, and Runescape HD was released on or around July 14, 2008. Jagex developed and published the Runescape software. By 2009, Runescape had approximately 104 million subscribers worldwide. Runescape holds the World Record as the most popular free massively multiplayer online role-playing game. Jagex earns revenue from Runescape by selling advertising space during game play as well as an optional \$5 per month subscription for access to extra content.

34. When played online through Jagex's service Runescape infringes the PalTalk patents. As a result of Jagex's unauthorized and infringing use of PalTalk's patented technology, PalTalk has suffered damages in at least the tens of millions of dollars.

H. Turbine's Infringing Products and Services

35. The following facts relating to Turbine are provided upon information and belief. The massively multiplayer online role-playing game Lord of the Rings Online was released on or around April 24, 2007. Turbine was involved in the development and publication of Lord of the Rings Online. Lord of the Rings Online requires a subscription to play over the Internet. Subscriptions cost approximately \$10-\$15 per month.

36. When played online through Turbine's service, Lord of the Rings Online infringes the PalTalk patents. As a result of Turbine's unauthorized and infringing use of PalTalk's patented technology, PalTalk has suffered damages in at least the tens of millions of dollars.

IV. CAUSES OF ACTION

A. Patent Infringement

37. The Infringing Parties have, without authority, consent, right or license, and in direct infringement of the PalTalk Patents made, used, sold, and/or offered for sale the methods claimed in the PalTalk Patents in this country. This conduct constitutes infringement under 35 U.S.C. § 271(a).

38. In addition, the Infringing Parties have in this country actively induced others to infringe one or more claims of the PalTalk Patents. This conduct constitutes infringement under 35 U.S.C. § 271(b).

39. The Infringing Parties also have provided software and hardware designed for use in practicing the claimed inventions in the PalTalk Patents, where the software and hardware

constitute a material part of the invention that is not a staple article of commerce, and which has no use other than for infringing online game play. The Infringing Parties have committed these acts with knowledge that the software and hardware they provide is specially made for use in a manner that directly infringes the PalTalk Patents. This conduct constitutes contributory infringement under 35 U.S.C. § 271(c).

40. The Infringing Parties' conduct is unlawful and will continue unless enjoined by this Court.

41. At least the infringing conduct of Sony, Sony America, SCEA, SOE, Activision, and Blizzard is willful. Starting as early as 1997, Sony and Sony America received technology from Mpath – PalTalk's predecessor-in-interest – to enable multiplayer online gaming on the Sony site “The Station.” SOE was a customer of Mpath. As part of that relationship, Mpath provided key technology to SOE, including its proprietary software and online architecture, to permit hundreds of thousands of users to play online interactive games such as Jeopardy and Wheel of Fortune on Sony’s site. In 1998, Sony and Sony America described the benefits of integrating Mpath’s technology and noted that the “use of these client-server systems allows the creation of an online community far more sophisticated and interactive than on the internet today.” As part of their dealings, Mpath considered licensing or selling its technology and source code to Sony America. During the same time frame that SOE received key online gaming technology from Mpath, Mpath filed its patent application related to online multiplayer gaming. The ‘523 patent was filed in February 1996 and issued in October 1998. Based on its course of dealings with Mpath, SOE had actual knowledge of the ’523 Patent at the time it issued. Additionally, U.S. Patent No. 6,625,813 was issued to Sony and Sony Electronics, Inc. on September 23, 2003. Sony and/or Sony Electronics, Inc. cited the ’523 Patent to the Examiner

during prosecution of the application that led to issuance of the '813 Patent. Thus, at least Sony and a sister entity to both SCEA and SOE had actual knowledge of the '523 Patent before 2003. This willful conduct by Sony, Sony America, SCEA, and SOE makes this an exceptional case as provided in 35 U.S.C. § 285.

42. Blizzard and Activision also utilized Mpath's technology in providing online versions of their games. Starting as early as 1995 and for several years thereafter, Blizzard negotiated to run online versions of its Warcraft and other games on Mpath's online gaming service. As part of their dealings, Mpath contemplated it would share information about its online technology with Blizzard to enable Blizzard's games to run on Mpath's service. In turn, Activision signed a game service agreement with Mpath in October of 1997 and became one of Mpath's customers. Mpath then developed a customized service for Activision for the provision of online games. During the same time frame that Activision and Blizzard utilized Mpath's gaming technology to provide online interactive gaming, Mpath filed its patent application related to online multiplayer gaming. The '523 patent was filed in February 1996 and issued in October 1998. Based on their course of dealings with Mpath, Activision and Blizzard had actual knowledge of the '523 Patent at the time it issued.

43. As a result of the Infringing Parties' infringement, PalTalk has been damaged, and will continue to be damaged, until the Infringing Parties are enjoined from further acts of infringement.

44. PalTalk faces real, substantial and irreparable damage and injury of a continuing nature from the Infringing Parties' infringement for which PalTalk has no adequate remedy at law.

B. Jury Demand

45. PalTalk demands a trial by jury on all issues.

WHEREFORE, PalTalk prays:

- (a) That this Court find the Infringing Parties have committed acts of patent infringement under the Patent Act, 35 U.S.C. § 271;
- (b) That this Court enter judgment that:
 - (i) PalTalk is the owner of the PalTalk Patents and all rights of recovery under the PalTalk Patents;
 - (ii) the PalTalk Patents are valid and enforceable; and
 - (iii) the Infringing Parties have willfully infringed the PalTalk Patents;
- (c) That this Court issue an injunction enjoining the Infringing Parties, their officers, agents, servants, employees and attorneys, and any other person in active concert or participation with them, from continuing the acts herein complained of, and more particularly, that the Infringing Parties and such other persons be permanently enjoined and restrained from further infringing the PalTalk Patents;
- (d) That this Court require the Infringing Parties to file with this Court, within thirty (30) days after entry of final judgment, a written statement under oath setting forth in detail the manner in which the Infringing Parties have complied with the injunction;
- (e) That this Court award PalTalk the damages to which it is entitled due to the Infringing Parties' patent infringement with both pre-judgment and post-judgment interest;
- (f) That Sony's, Sony America's, SCEA's, SOE's, Activision's, and Blizzard's infringement of the PalTalk Patents be adjudged willful and that the damages to PalTalk be increased by three times the amount found or assessed pursuant to 35 U.S.C. § 284;

- (g) That this be adjudged an exceptional case and that PalTalk be awarded its attorney fees in this action pursuant to 35 U.S.C. § 285;
- (h) That this Court award PalTalk its costs and disbursements in this civil action, including reasonable attorney's fees; and
- (i) That this Court grant PalTalk such other and further relief, in law or in equity, both general and special, to which it may be entitled.

Respectfully submitted,

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